



December 29, 2009

NCUA Proposed Rule on Chartering and Field of Membership of Community Credit Unions

EXECUTIVE SUMMARY

- The National Credit Union Administration (NCUA) Board has adopted a proposed rule to make changes to its policies on federal community credit union application and field of membership (FOM) expansion.
- Key among the changes are proposed objective and quantifiable criteria to assist credit unions and NCUA in determining whether a local community exists for the purpose of charter and FOM applications.
- The proposal would define the term, "rural district," and would clarify NCUA's marketing plan requirements for credit unions converting to or expanding their community charters.
- Also, the proposal would provide a definition of the term, "in danger of insolvency" for purposes of allowing mergers between two credit unions with dissimilar fields of membership.
- CUNA will be working with its Community Credit Union Committee and Federal Credit Union Subcommittee to develop our comment letter.
- Comments are due to NCUA by April 15, 2010; please submit your comments to CUNA by March 29, 2010.

Please feel free to e-mail your responses to Senior Vice President and Deputy General Counsel Mary Dunn at mdunn@cuna.coop. You may also contact Mary Dunn at 800-356-9655, ext. 6736, if you have questions. [Click here](#) to access the proposed rule.

BACKGROUND

Current Community Charter Rules

Under NCUA's current FOM rules, a community credit union may qualify to charter or expand if the area to be served is a well-defined local community (WDLC) that is a single political jurisdiction, is comprised of multiple contiguous political jurisdictions, or is a rural district which meets the criteria NCUA has established. While it is not difficult to meet the standard for a single jurisdiction, the current rules make it much more difficult to demonstrate that multiple, contiguous political jurisdictions are a WDLC. Also, the current rule does not provide a definition of "rural district."

Regarding multiple, contiguous political jurisdictions, the current rule requires a credit union to submit a narrative describing how the area meets the standards for community interaction and/or common interests with supporting documentation, such as commuting patterns, employment patterns, major trade areas, shared common facilities, organizations and clubs within the requested area, and newspaper circulation. Assembling this information has often been voluminous and time consuming, as well as expensive for the applicant not to mention burdensome for NCUA to review, particularly when more information is needed. Most importantly, NCUA's current rule and process for reviewing community charter applications has not shielded credit unions or the agency from numerous successful banker legal challenges. Regarding "rural districts" the absence of a regulatory definition of this term has made the process of seeking to serve rural areas often difficult and quite subjective.

To address these concerns, NCUA issued a proposal in May 2007. However, that proposal would not have improved the process and CUNA strongly opposed it.

In addition, NCUA is seeking comment on how to improve the underserved area approval process.

DESCRIPTION OF THE PROPOSED RULE

One of the first objectives new NCUA Board Chairman Matz established for her tenure was improving the FOM rule and process. She directed the NCUA staff to develop a new proposal for the Board's consideration, which was presented in December 2009. Below is a summary of the proposal.

Well-Defined Local Communities (WDLC)

i. Single Political Jurisdictions

Under the proposal, single political jurisdictions are treated the same as they are under the current rule and any county, city, or smaller political jurisdiction,

regardless of population size, is by definition a WDLC. An entire state is not permitted as a WDLC. However, documentation demonstrating that smaller political jurisdictions are a WDLC is not required.

ii. Multiple Political Jurisdictions

The approach to determining multiple jurisdictions contained in NCUA's 2007 proposal was among the many provisions CUNA opposed. The Board is now proposing a less cumbersome process to establish a strictly statistical basis for defining WDLCs when multiple political jurisdictions are the basis for the community application. The Board said the application of strictly statistical rules for determining whether an area is a WDLC has the advantage of minimizing ambiguity and making the application process less time consuming. Thus, under the proposal, an area will be considered a WDLC if all of the following four requirements are met:

- 1) The area is a recognized core-based statistical area (CBSA), or in the case of a CBSA with Metropolitan Divisions, the area is a single Metropolitan Division;
- 2) The area contains a dominant city, county or equivalent with a majority of all jobs in the CBSA or in the Metropolitan Division;
- 3) The dominant city, county or equivalent contains at least 1/3 of the CBSA's or Metropolitan Division's total population; and
- 4) The area has a population of no more than 2.5 million people.

NCUA is employing definitions from the Office of Management and Budget (OMB), which are used in relation to the census, with respect to the definition of a CBSA and terms which help describe it. These include:

CBSA – “A statistical geographic entity consisting of the county or counties associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core.

Metropolitan Division – A division of a CBSA, defined as “a county or group of counties within a Core Based Statistical Area that contains a core with a population of at least 2.5 million.” Metropolitan Divisions often function as distinct, social, economic, and cultural areas within a larger Metropolitan Statistical Area.

Metropolitan Statistical Area – A type of CBSA defined as a “Core Based Statistical Area associated with at least one urbanized area that has a population

of at least 50,000. The Metropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.”

Micropolitan Statistical Area – Another type of CBSA defined as a “Core Based Statistical Area associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000. The Micropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.”

Demonstrated commuting patterns supporting a high degree of social and economic integration is a significant factor in community chartering, particularly in situations involving large areas with multiple political jurisdictions, according to NCUA. NCUA also points out that in a community based model, significant interaction through commuting patterns into one central area or urban core strengthens the membership of a credit union and allows a community based credit union to efficiently serve the needs of the membership throughout the area. Such data demonstrates a high degree of interaction through the major life activity of working and activities associated with employment. Large numbers of residents share common interests in the various economic and social activities contained within the core economic area.

NCUA points out that historically, commuting has been an uncomplicated method of demonstrating functional integration and agrees with OMB’s conclusion that “commuting to work is an easily understood measure that reflects the social and economic integration of geographic areas.” The Board also found useful OMB’s conclusion that commuting patterns within statistical areas demonstrate a high degree of social and economic integration with the central county. OMB’s threshold for qualifying a county as an outlying county eligible for inclusion in either a MSA or MicroSA is a threshold of 25 percent inter-county commuting. OMB also considers a multiplier effect (a standard method used in economic analysis to determine the impact of new jobs on a local economy) that each commuter would have on the economy of the county in which he or she commutes.

As OMB has noted, Metropolitan Divisions often function as distinct social, economic, and cultural areas. In the Board’s view, this evidence detracts from the cohesiveness of a CBSA with Metropolitan Divisions. Accordingly, under the proposal, a CBSA with Metropolitan Divisions will not meet the definition of a WDLC. Individual Metropolitan Divisions within the CBSA will qualify as a WDLC if the population and employment criteria are met.

The Board stated that when multiple political jurisdictions are present, an overly large population can detract from the cohesiveness of a geographic area. For

that reason, the Board is proposing to cap a multijurisdictional area at 2.5 million or fewer people in order to qualify as a WDLC. The Board is proposing that population threshold because OMB generally designates a metropolitan division within a CBSA that has a core of at least 2.5 million people. The Board noted that the established threshold is a logical breaking point in terms of community cohesiveness with respect to a multijurisdictional area.

Also, the Board acknowledges that not all areas of the country are the same and there may be a CBSA that does not contain a sufficiently dominant core area or contains several significant core areas. Such situations also dilute the cohesiveness of a CBSA. For these reasons, the Board proposes to require that a CBSA contain a dominant core city, county, or equivalent that contains the majority of all jobs and 1/3 of the total population contained in the CBSA in order to meet the definition of a WDLC. These additional requirements will assure that the core area dominates any other area within the CBSA with respect to jobs and population. As NCUA points out, credit union applicants can find information about an area's population and number of local jobs, based upon an analysis of where people who work in an area reside, at the Census' website (www.census.gov). Information about the current definitions of CBSAs is available at OMB's website (www.whitehouse.gov/omb). Also, during the NCUA Board meeting, Chairman Matz commented that this process would mean that a credit union could call its NCUA regional office and get an answer during the call as to whether an area meets NCUA's requirements.

Also, under the proposal, community charter applications for part of a CBSA will be considered, so long as the credit union shows that the area includes a dominant core city, county, or equivalent.

NCUA proposes to eliminate from the community chartering process the narrative approach and all related aspects of that procedure. Thus, if a multiple jurisdictional area does not meet the statistical criteria, a credit union would not be permitted to file additional descriptive information to help persuade the agency that the community exists. This approach will limit a credit union's flexibility in supplementing its application, but will remove the arbitrariness and NCUA's ability to disapprove a community for subjective reasons. "While not every area will qualify as a WDLC, NCUA believes the consistency of this objective approach will enhance its chartering policy and greatly ease the burden for any community charter applicant."

Under the proposal, an area previously approved by NCUA as a WDLC, prior to the effective date of the proposed rule when finalized, will continue to be considered a WDLC for subsequent applicants who wish to serve the same geographic area.

Rural District

CUNA also strongly opposed NCUA's definition of "rural district" in the May 2007 proposal. The NCUA Board is proposing to define a rural district as a contiguous area that has more than 50 percent of its population in census blocks that are designated as rural and the total population of the area does not exceed 100,000 persons. NCUA said these requirements will ensure that a rural district has a low total population, a majority of which is in areas classified as rural for purposes of the Census.

Underserved Communities

NCUA is not proposing to change the definition of "underserved communities" per se. However, the Board is proposing to amend the language in the Chartering Manual's underserved communities section concerning the "local community, neighborhood, or rural district" requirement to conform it with the proposed new definitions of WDLC and rural district by referring the reader to Chapter Two for the actual text of the definitions.

Also, NCUA is seeking comments on changes it made in December 2008 for aspects of the process for approving credit union service to underserved areas that some credit unions have said make the underserved area expansion process overly burdensome. The rule stated that an underserved area must independently qualify as a WDLC. Also, the Community Development Financial Institution Fund's "geographic units" of measure and 85 percent population threshold, when applicable, must be used to determine whether a proposed area meets the "criteria of economic distress" which NCUA believed the Federal Credit Union Act required even though NCUA had never before required an underserved area to conform to these criteria. Third, the 2008 rule updated the documentation requirements for demonstrating that a proposed area has "significant unmet needs." Finally, NCUA approved a "concentration of facilities" methodology to implement the statutory requirement that a proposed area must be "underserved by other depository institutions." CUNA opposed this approach when it was proposed and will be filing similar comments on this proposal.

Marketing Plans

As NCUA noted, determining whether an area is a WDLC is the first of two criteria a federal credit union (FCU) must meet to obtain a community charter or expansion. The second hurdle is to demonstrate a credit union's capability to serve the WDLC. This applies to all WDLCs including single political jurisdictions, statistical areas, and grandfathered communities. Typically, an FCU demonstrates how it will serve an established WDLC in its marketing plan.

The Board is proposing to provide additional guidance regarding NCUA's marketing plan requirements. The proposal clarifies that a marketing plan must demonstrate, in detail:

- How the credit union will implement its business plan to serve the entire community;
- The unique needs of the various demographic groups in the proposed community;
- How the credit union will market to each group, particularly the underserved;
- Which community-based organizations the credit union will target in its outreach efforts;
- The credit union's marketing budget projections dedicating greater resources to reaching new members; and
- The credit union's timetable for implementation, not just a calendar of events.

Also, under the proposal, the appropriate regional office will follow-up with an FCU every year for three years after it has been granted a new or expanded community charter, and at any other intervals NCUA believes appropriate, to determine whether it is satisfying the terms of its marketing and business plans. An FCU failing to satisfy those terms will be subject to supervisory action. The NCUA regional office will report to the NCUA Board when an FCU fails to follow its business plan and indicate what administrative actions the region intends to take.

Processing of Applications Prior to the Adoption of a Final Rule

NCUA said it will accept community charter applications that are based on grandfathered WDLCs or single political jurisdictions between December 17, 2009, the date the proposal was issued for comment, and the effective date of the final changes. After the final rule's effective date, NCUA will again accept all community charter applications under the revised version of NCUA's community chartering policies.

Field of Membership Issues in Emergency Mergers

NCUA may permit credit unions with dissimilar FOMs to merge in emergency situations. NCUA must determine that the credit union is either insolvent or in danger of insolvency before it makes the additional findings that an emergency exists, that other alternatives are not reasonably available, and that the public

interest would be served by the merger. The FCU Act does not define the term, “in danger of insolvency” and until now no definition has existed.

Under the proposal, NCUA believes that a credit union is in danger of insolvency if it falls into one or more of the following three categories:

- The credit union’s net worth is declining at a rate that will render it insolvent within 24 months. In NCUA’s experience with troubled credit unions, the trend line to zero net worth often worsens once a credit union actually approaches zero net worth. It is more difficult for NCUA to keep the costs to the National Credit Union Share Insurance Fund (NCUSIF) low when a credit union is near, or below, zero net worth.
- The credit union’s net worth is declining at a rate that will take it under two percent net worth within 12 months. A credit union with a net worth ratio of less than two percent falls into the PCA category of “critically undercapitalized.” NCUA notes that prompt corrective action created a presumption that a critically undercapitalized credit union should be liquidated or conserved if its financial condition does not improve within a short period.
- The credit union’s net worth, as self-reported on its Call Report, is significantly undercapitalized, and NCUA determines that there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months. A credit union with a net worth ratio between two percent and less than four percent falls into the PCA category of “significantly undercapitalized.” NCUA has discretion to deal with such a credit union, provided it has no reasonable prospect of becoming adequately capitalized.

QUESTIONS TO CONSIDER REGARDING THE PROPOSED RULE

1) Should NCUA change the current FOM rules for community charter applications? _____

2) Do you agree that NCUA’s application process for single political jurisdictions should be retained? _____

3) Do you agree that communities based on multiple political jurisdictions should be defined statistically as NCUA is proposing? _____

4) Should all four of the criteria for multiple political jurisdictions have to be met (i.e., CBSA, population of 2.5 million or less)? If not, which should be excluded?

5) Will you or applicant credit unions be able to readily determine if their multiple jurisdictional area meets NCUA's criteria? _____

6) Will it be pragmatic to use the Census Bureau website for this information? Should NCUA provide application tools on its website to help credit unions determine if their areas meet the new criteria? _____

7) Do you agree with NCUA's proposed marketing plan requirements?

8) Should credit unions be subjected to sanctions if the requirements are not met?

9) Should NCUA revisit the marketing plan as proposed?

10) Do you support NCUA's proposed definition of rural district? If not, what

would you recommend?

11) Do you agree with NCUA's current rule that an underserved area must also qualify as a well-defined local community and, meet the Community Development Financial Institutions' requirement that 85 percent of the area applied for is in the underserved area based on census-tract-by-census-tract analysis?

12) Are there other parts of NCUA's rules regarding underserved areas you think should be changed?

13) Do you support NCUA's approach to facilitate emergency mergers for credit unions with dissimilar common bonds? _____

14) Are there other FOM issues or concerns you would like to raise at this time?
